IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Application No. 266/2005

1 Rajesh Kumar s/o late Jai Singh
R/o Opposite Primary Pathshala
R.K.Sweats Ambedkar Nagar ,
Police Station Jwalapur,
District Haridwar. Applicant

Versus

1 State of Uttaranchal
2 IInd Additional Civil Judge (JD) Haridwar
District Haridwar.
3 Smt, Kusum w/o Sri Ram Prasad
R/o Lal Mandir Colony, Jwalapur
Police Station Jwalapur,
District Haridwar Opposite parties.

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr.P.C. has been filed by the applicant Rajesh Kumar for quashing further proceedings in Criminal case No. 1254 of 2004 State versus Rajesh under Section 363,366-A and 376 of IPC pending before the court of IInd Additional Civil Judge (JD), Haridwar.

Brief facts giving rise to this petition are that a First Information Report was lodged on 27.5.2004 against the applicant under Section 363,366-A IPC.

The petitioner against the lodging of the First Information Report filed a Writ Petition before Hon'ble High Court and this Court stayed the arrest of the petitioner till the stage of the submission of charge sheet.

After the submission of the charge sheet under Section 363,366-A, 376 IPC, the petitioner was summoned by the learned Chief Judicial Magistrate vide order dated 12.10. 2004 and the petitioner thereafter filed this petition under Section 482 Cr.P.C.

before this court for quashing the proceedings pending against him.

This court vide order dated 6.5. 2005 after hearing the learned counsel for the petitioner issued notice to the respondents. This Court stayed the further proceedings in the criminal case pending against the petitioner before the court below.

Counter affidavit has been filed by respondent No.3 denying the averments made in the petition. Respondents No.1 State of Uttaranchal has also filed the counter affidavit.

Heard Sh. Vivek Shukla, learned counsel for the petitioner Sh.G.S Sandhu, learned AGA ,Sh. Pankaj Miglani ,learned counsel for respondent No.3 and perused the record.

Learned counsel for the petitioner has argued that a prima facie case is not made out against the petitioner as the prosecutrix has not supported the case of the prosecution in her statement under Section 161 Cr.P.C. It has also been submitted that the First Information Report has been lodged after a period of about nine days and this delay has not been explained in any manner.

It has also been submitted that the age of the prosecutrix at the time of occurrence was found to be nineteen years, hence sections 363,366A are not attracted at all against the petitioner.

The learned counsel for the respondent has argued that the prosecutrix in her statement recorded under Section 161 Cr.P.C by the Investigating Officer and as well as statement recorded under Section 164 Cr.P.C before the Magistrate had clearly stated that it was the accused/petitioner who took her forcibly without her consent and committed rape upon her.

After hearing the rival contention of the learned counsel for the parties, I am of the view that the contention raised by the

learned counsel for the petitioner relates to the factual aspect of the matter which can only be assessed and examined by the trial court during the course of trial.

This court is not supposed to embark upon an enquiry as to the reliability of the evidence as well as sustainability of the accusation on a reasonable appreciation of such evidence. Any judgment by this court on the basis of the document filed before this court at this stage, would amount to pre-mature decision specifically when the evidence is yet to be adduced before the trial court and the evidence is still incomplete and hazy.

At this stage I do not find any serious mis-carriage of justice and abuse of process of court . I also could not lay my hands that any mandatory provisions of law were not complied with by the learned court below.

I do not find any material at this stage which may suggest that the First Information report is a result of malafide or it is frivolous or vexatious. I do not find sufficient ground to quash the proceedings pending before the learned court below.

The petition lacks merit and is liable to be dismissed. Accordingly the petition is dismissed.

The order dated 6.5. 2005 staying the further proceedings in Criminal Case No.1254 of 2004 (State Versus Rajesh) arising out of case crime No. 195/2004 pending before the court of IInd Additional Civil Judge (JD), Haridwar stands vacated.

However, in case, if the petitioner moves bail application before the court below the same should be decided expeditiously by the court below according to law.

(B.C. Kandpal, J.)

9.11.2005